

Message Text

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SUBJECT: XCSS EXPERTS MEETING APRIL 29-30

REF: (A) CES/74.38, PRINCIPLE OF NATIONAL TREATMENT

(B) CES/74.39, INTERNATIONAL EFFECTS OF OFFICIAL
INVESTMENT INCENTIVES AND DIS-
INCENTIVES

(C) CES/74.40, CLARIFICATION OF TERM MULTINATIONAL
ENTERPRISE

1. SUMMARY. SECRETARIAT DISTRIBUTED THREE DOCUMENTS
(REFS A, B AND C) FOR XCSS INVESTMENT EXPERTS MEETING
APRIL 29-30 ON FRIDAY, APRIL 12. MISSION SENT COPIES
THAT DATE BY OPEN AIRMAIL TO TREASURY (KORP) AND BY
POUCH TO STATE (RPE).TP END SUMMARY.

2. REF A ON NATIONAL TREATMENT (SIX PAGES) PROPOSES
GUIDELINE TO BE FOLLOWED BY MEMBERS AND OUTLINES SCOPE OF
GUIDELINE AND GENERAL EXCEPTIONS. COUNTRIES WOULD BE
EXPECTED TO LODGE SPECIFIC RESERVATIONS AT TIME GUIDELINE
ENTERS INTO FORCE. SECTION ON PROCEDURES INDICATES THAT
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A COMMITTEE (YET UNNAMED) WOULD ORGANIZE CONSULTATIONS TO

APPRAISE THE APPLICATION OF THE GUIDELINE FROM TIME TO TIME, AND THAT MEMBERS WOULD ENGAGE IN CONSULTATIONS WITH OTHER MEMBERS ON PARTICULAR CASES OR GENERAL QUESTIONS CONCERNING APPLICATION OF THE GUIDELINE UPON REQUEST TO THE COMMITTEE. IT IS EXPECTED THAT REF A WILL HAVE TO BE CHECKED BY LEGAL EXPERTS AT A LATER STAGE AND THAT IT COULD BE SUBMITTED TO XCSS AT SOME MEETING AFTER APRIL, 1974. TEXT OF GUIDELINE IS: "A MEMBER SHALL, TO THE EXTENT NECESSARY FOR EFFECTIVE ECONOMIC CO-OPERATION, ACCORD TO ENTERPRISES SUBJECT TO FOREIGN CONTROL WHICH ARE LEGALLY OPERATING ON ITS TERRITORY, THE SAME TREATMENT THE MEMBER ACCORDS TO ENTERPRISES WHICH ARE ENTIRELY SUBJECT TO THE CONTROL OF ITS NATIONALS."

3. REF B (TWO PAGES) GIVES A SHORT DISCUSSION ON USE OF INVESTMENT INCENTIVES AND DISINCENTIVES BY COUNTRIES AND PROVIDES THAT ANY MEMBER COUNTRY MAY CALL FOR CONSULTATIONS CONCERNING THE INCENTIVES AND DISINCENTIVES USED BY OTHER COUNTRIES, WITH GOAL BEING TO REDUCE NEGATIVE EFFECTS ("SUBSTANTIAL DAMAGE TO ECONOMY OR INDUSTRIAL PRODUCTION") TO A MINIMUM. IT ALSO PROVIDES FOR GENERAL CONSULTATIONS TO BE HELD PERIODICALLY ON EXISTING MEASURES IN MEMBER COUNTRIES IN ORDER TO ASSESSTHEIR IMPACT ON INVESTMENT AND TRADE. THE SCOPE OF THESE GENERAL CONSULTATIONS, AS YET UNDEFINED, WOULD HAVE TO BE AGREED UPON IN ADVANCE. THE GUIDELINE BASICALLY STATES THAT COUNTRIES SHALL TAKE THE INTERNATIONAL EFFECTS OF INVESTMENT INCENTIVES AND DISINCENTIVES INTO CONSIDERATION WITH VIEW TO AVOIDING HARMFUL EFFECTS THEY MAY HAVE ON OTHER COUNTRIES, AND SHALL FAVOR MEASURES WHICH REDUCE HARMFUL EFFECTS TO A MINIMUM. IN ADDITION, COUNTRIES SHALL ENDEAVOR TO MAKE SUCH MEASURES AS TRANSPARENT AS POSSIBLE.

4. REF C EXAMINES EXISTING DEFINITIONS OF "MULTINATIONAL ENTERPRISE" AT SOME LENGTH AND CONCLUDES THAT A DEFINITION DERIVED FROM THE CONCEPT OF DIRECT FOREIGN INVESTMENT WOULD BE MOST USEFUL FOR OECD PURPOSES AND WOULD BE USED FOR ALL OECD WORK ON MNC QUESTIONS WITH CUTOFF POINTS BASED ON SIZE OF FIRM AS APPROPRIATE FOR EACH

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PROJECT. REF C POINTS OUT THAT CONSIDERATION OF PRACTICAL DEFINITION SHOULD NOTE NEED TO COVER ALL FIRMS TO WHICH POSSIBLE GUIDELINES AND STANDARDS OF BEHAVIOR WOULD APPLY, AND SHOULD CONSIDER IMPLICATION OF FACT THAT NATIONAL LEGISLATION APPLIES TO LEGAL ENTITIES, AND THAT LEGAL UNIT AND STATISTICAL UNIT MAY NOT NECESSARILY COINCIDE IN MANY COUNTRIES.

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